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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
DEC 31 2001
DOCKETED BY

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. T-00000B-97-0238 **Qwest's Comments on the Commission's Final Decision Re: Line Sharing Provisioning Interval**

In its final Order on Emerging Services, the Arizona Corporation Commission (ACC) approved Qwest's processes for making line shared loops available to CLECs. Specifically, the Commission approved Qwest's three-day interval for provisioning line-shared loops. However, the Commission also required Qwest to "file . . . an amendment to its SGAT abbreviating the interval to provision line shared loop[s] to no greater than two days, or set forth a statement setting forth its reasons for not filing such an amendment." *November 16, 2001 Emerging Services Order* (hereinafter "*Order*") at p. 28. Qwest hereby sets forth its reasons for maintaining the current 3-day provisioning interval.

A. The Current 3-Day Provisioning Interval Allows CLECs to Obtain Line Shared Loops Much Faster than Required by the FCC.

In the *Line Sharing Order*, the FCC expressly and unequivocally determined that ILECs must provision line sharing to CLECs in equivalent time frames to retail DSL service:

> As a general matter, the nondiscrimination obligation requires incumbent LECs to provide to requesting carriers access to the high frequency portion of the loop that is equal to that access the incumbent provides to itself for *retail* DSL service its customers or its affiliates, in terms of quality, accuracy and timeliness. Thus, we encourage states to require, in arbitration proceedings, incumbent LECs to fulfill requests for line sharing within the *same interval the incumbent provision xDSL to its own retail or wholesale customers*, regardless of whether the incumbent uses an automated or manual process.[1]

Over the past four months, Qwest's audited performance data shows that it has

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1 Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*") ¶ 173 (emphasis added). The FCC ordered ILECs such as Qwest to offer line sharing as an unbundled network element because it was convinced by the CLEC community that ILECs offered the functional equivalent of line sharing to their own retail customers. *Line Sharing Order* at ¶33. The FCC rationalized that it would be inappropriate to place CLECs at a competitive disadvantage. *Id.* Thus, the FCC required line sharing and required ILECs to provision line sharing in similar intervals to that which the ILEC provides DSL service to its retail customers. In other words, the FCC ordered retail parity. Qwest currently offers CLECs a 3-day line sharing provisioning interval, which is significantly faster than Qwest offers DSL service to its DSL customers. Covad contends that this is not enough, arguing that the work involved in provisioning line sharing does not take that much effort; therefore, Qwest should provision the service in one day. The CLECs should not be permitted to obtain line sharing by arguing retail parity and then obtain ridiculously short provisioning intervals by arguing there is no retail parity. The CLECs should be collaterally and judicially estopped from making such an argument. Moreover, Covad's rationale for the shorter interval is particularly disturbing: Covad testified that Covad desires a "competitive edge" over Qwest in the provisioning of retail services using DSL technology:

> We have proposed going from the five-day down to a one-day interval over a period of time. I don't think that's totally unreasonable. But the parity issue, no, I don't think that is appropriate. Just because their business plan and their customers are satisfied with the 10-day interval, it doesn't mean that all of the customers in the state of Colorado are satisfied with waiting 10 days for that service to be put in.
>
> One of the things that we would like to offer to our customers is a better quality of service as being maybe one of the *competitive edges* that we can provide in entering in market. And in order to do that, we have to be able to differentiate ourselves.

Covad misses the mark. The Act does not require intervals that provide CLECs with a competitive advantage; rather, the FCC requires Qwest to provide service to CLECs in "substantially the same time and manner" as it provides analogous service to retail customers. As will be stated below, even though a retail analog exists for line sharing, the parties to the Arizona TAG have negotiated a benchmark that Qwest can and does achieve with the 3-day interval. Thus, the Commission should now consider this issue moot.

provisioned retail DSL in Arizona in intervals greater than 5-days.[2] In discovery, Covad opined that it needs only a few hours to perform their side of the line sharing arrangement. Thus, even tacking this time onto the end of the process, the 3-day interval provides CLECs with line sharing faster than Qwest retail customers receive DSL service.

B. The Current 3-Day Provisioning Interval Allows Qwest to Meet the Negotiated 3.3-Day Benchmark for the Provision of Line-Shared Loops.

Since the workshop, Qwest and CLECs have negotiated and agreed upon performance benchmarks for the provision of line sharing. The Arizona standard requires Qwest to provision line sharing in, on average, 3.3 days. The FCC has repeatedly stated that negotiated benchmarks ensure CLECs have a meaningful opportunity to compete:

> [W]here, as here, [performance] standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time or manner or in a way that provides them a meaningful opportunity to compete.[3]

By negotiating these benchmarks in the Arizona TAG, the CLECs have effectively rendered this issue moot. The parties have now agreed on what performance an efficient CLEC needs to compete with line sharing in the marketplace. In each month between July and November, Qwest's current 3-day line sharing interval has yielded

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2 See Qwest Corporation's Performance Data for Arizona [December 2000 – November 2001] at 234-35 (Zone 1 & 2, OP-4).

3 Verizon Massachusetts Order ¶13. The FCC has made this point repeatedly in its 271 decisions. For example, in its Bell Atlantic 271 Decision the FCC found "At the same time, for functions for which there are no retail analogues, and for which performance benchmarks have been developed with the ongoing participation of affected competitors and the BOC, those standards may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete." Bell Atlantic New York Order ¶55.

average intervals almost identical to 3.3 days.[4] In fact, the average interval for all line shared loops over this 5-month span was 3.38 days. Thus, Qwest's current 3-day installation interval provides CLECs a meaningful opportunity to compete. Moreover, this data shows that Qwest provides line sharing in intervals shorter than three days when possible.

C. The Commissions to Finally Consider this Issue Have All Agreed with Qwest's 3-Day Provisioning Interval.

Eight state commissions in Qwest's region have considered this issue, and all eight have supported a 3-day or longer interval. The Multistate Facilitator found that: "The evidence in the record does lead to the conclusion that Qwest's five-day interval will allow ample opportunity overall for CLECs to complete remaining work in time to provide end users with xDSL services within time frames that are competitive with what Qwest is now applying."[5] The Colorado Hearing Commissioner also found in Qwest's favor on this issue. Thus, the state commissions from Colorado, Idaho, Iowa, Nebraska,

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4 The December 2000 to November 2001 Performance Report (No Dispatch: OP-4) shows:

Month (2001)	Interval (days)
July	3.38
August	3.04
September	2.99
October	3.22
November	3.15

Qwest uses the "no dispatch" data because 92.5% of all line shared loops do not require a technician dispatch. Over the past 5 months since the interval has been 3-days, Qwest has not required a technician dispatch in 585 of the 632 line shared loops ordered with the 3-day interval in Arizona. Factoring in all line shared loops – even those with a technician dispatch that necessarily take more time – Qwest has provisioned line sharing in Arizona in 3.38 days since July when the line sharing interval became 3-days. This is right at the benchmark and, again, significantly faster than retail DSL.

5 *See* Exhibit 1, Multistate Facilitator's Emerging Services Report at 21-22.

New Mexico, North Dakota Utah, and Wyoming have all supported Qwest's line sharing interval.[6]

D. Conclusion

For all of the aforementioned reasons, this Commission should reaffirm its prior decision that Qwest's 3-day provisioning interval for line shared loops is appropriate.

DATED this 31st day of December, 2001.

Respectfully submitted,

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6 The Montana Commission has suggested it will support Qwest's interval in its proposed findings. The Washington and Oregon Commissions are yet to finally consider this issue. A Washington Administrative Law Judge did recommend a 1-day interval; however, Qwest has challenged this recommendation, the ALJ was unaware of the negotiated performance benchmark for line sharing, and the matter is before the Washington Commission for consideration.

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